

**ASSEMBLY BILL**

**No. 195**

**Introduced by Assembly Member Dymally**

January 27, 2005

---

An act to amend 19702 of the Government Code, relating to state civil service.

LEGISLATIVE COUNSEL'S DIGEST

AB 195, as introduced, Dymally. Civil service: employment discrimination.

The State Civil Service Act prohibits discrimination in public employment on the same bases as in the Fair Employment and Housing Act. Those bases are race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation.

The act also requires the State Personnel Board to issue an order that may require the appointing authority to hire, reinstate, or upgrade an employee with or without backpay and compensatory damages if the board finds that discrimination has occurred in violation of the act.

This bill would, additionally, authorize the board to award reasonable attorney's fees and costs, including expert witness fees to the employee.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 19702 of the Government Code is  
2     amended to read:

1 19702. (a) A person shall not be discriminated against under  
2 this part on any basis listed in subdivision (a) of Section 12940,  
3 as those bases are defined in Sections 12926 and 12926.1, except  
4 as otherwise provided in Section 12940. A person shall not be  
5 retaliated against because he or she has opposed any practice  
6 made an unlawful employment practice, or made a charge,  
7 testified, assisted, or participated in any manner in an  
8 investigation, proceeding, or hearing under this part. This  
9 subdivision is declaratory of existing law.

10 (b) For purposes of this article, “discrimination” includes  
11 harassment.

12 (c) If the board finds that a person has engaged in  
13 discrimination under this part, and it appears that this practice  
14 consisted of acts described in Section 243.4, 261, 262, 286, 288,  
15 288a, or 289 of the Penal Code, the board, with the consent of the  
16 complainant, shall provide the local district attorney’s office with  
17 a copy of the board’s decision and order.

18 (d) (1) Except as otherwise provided in paragraph (2), if the  
19 board finds that discrimination has occurred in violation of this  
20 part, the board shall issue and cause to be served on the  
21 appointing authority an order requiring the appointing authority  
22 to cause the discrimination to cease and desist and to take any  
23 action, including, but not limited to, hiring, reinstatement, or  
24 upgrading of employees, with or without backpay, ~~and~~  
25 compensatory damages, *and reasonable attorney’s fees and*  
26 *costs, including expert witness fees*, which, in the judgment of the  
27 board, will effectuate the purposes of this part. Consistent with  
28 this authority, the board may establish rules governing the award  
29 of compensatory damages, *and attorney’s fees and costs*. The  
30 order shall include a requirement of reporting the manner of  
31 compliance.

32 (2) Notwithstanding paragraph (1), this paragraph applies to  
33 state employees in State Bargaining Unit 6 or 8. If the board  
34 finds that discrimination has occurred in violation of this part, the  
35 board shall issue and cause to be served on the appointing  
36 authority an order requiring the appointing authority to cause the  
37 discrimination to cease and desist and to take any action,  
38 including, but not limited to, hiring, reinstatement, or upgrading  
39 of employees, with or without backpay, adding additional  
40 seniority, ~~and~~ compensatory damages, *and reasonable attorney’s*

1 *fees and costs, including expert witness fees*, which, in the  
2 judgment of the board, will effectuate the purposes of this part.  
3 Consistent with this authority, the board may establish rules  
4 governing the award of compensatory damages *and attorney's*  
5 *fees and costs*. The order shall include a requirement of reporting  
6 the manner of compliance.

7 (e) Any person claiming discrimination within the state civil  
8 service may submit a written complaint that states the particulars  
9 of the alleged discrimination, the name of the appointing  
10 authority, the persons alleged to have committed the unlawful  
11 discrimination, and any other information that the board may  
12 require. The complaint shall be filed with the appointing  
13 authority or, in accordance with board rules, with the board itself.

14 (f) (1) Complaints shall be filed within one year of the alleged  
15 unlawful discrimination or the refusal to act in accordance with  
16 this section, except that this period may be extended for not  
17 greater than 90 days following the expiration of that year, if a  
18 person allegedly aggrieved by unlawful discrimination first  
19 obtained knowledge of the facts of the alleged unlawful  
20 discrimination after the expiration of one year from the date of its  
21 occurrence. Complaints of discrimination in adverse actions or  
22 rejections on probation shall be filed in accordance with Sections  
23 19175 and 19575.

24 (2) Notwithstanding paragraph (1), this paragraph shall apply  
25 only to state employees in State Bargaining Unit 8. Complaints  
26 shall be filed within one year of the alleged unlawful  
27 discrimination or the refusal to act in accordance with this  
28 section, except that this period may be extended for not greater  
29 than 90 days following the expiration of that year, if a person  
30 allegedly aggrieved by unlawful discrimination first obtained  
31 knowledge of the facts of the alleged unlawful discrimination  
32 after the expiration of one year from the date of its occurrence.  
33 Complaints of discrimination in disciplinary actions defined in  
34 Section 19576.5 shall be filed in accordance with that section.  
35 Complaints of discrimination in all other disciplinary actions  
36 shall be filed in accordance with Section 19575. Complaints of  
37 discrimination in rejections on probation shall be filed in  
38 accordance with Section 19175.3.

39 (g) If an employee of the appointing authority refuses, or  
40 threatens to refuse, to cooperate in the investigation of a

1 complaint of discrimination, the appointing authority may seek  
2 assistance from the board. The board may provide for direct  
3 investigation or hearing of the complaint, the use of subpoenas,  
4 or any other action that will effectuate the purposes of this  
5 section.

6 (h) If a person demonstrates by a preponderance of evidence  
7 that the person's opposition to any practice made an unlawful  
8 employment practice under this part, or the person's charging,  
9 testifying, assisting, or participation in any manner in an  
10 investigation, proceeding, or hearing under this part, was a  
11 contributing factor in any adverse employment action taken  
12 against him or her, the burden of proof shall be on the supervisor,  
13 manager, employee, or appointing power to demonstrate by clear  
14 and convincing evidence that the alleged adverse employment  
15 action would have occurred for legitimate, independent reasons  
16 even if the person had not engaged in activities protected under  
17 this part. If the supervisor, manager, employee, or appointing  
18 power fails to meet this burden of proof in any administrative  
19 review, challenge, or adjudication in which retaliation has been  
20 demonstrated to be a contributing factor, the person shall have a  
21 complete affirmative defense to the adverse employment action.

22 (i) As used in this part, "adverse employment action" includes  
23 promising to confer, or conferring, any benefit, effecting, or  
24 threatening to effect, any reprisal, or taking, or directing others to  
25 take, or recommending, processing, or approving, any personnel  
26 action, including, but not limited to, appointment, promotion,  
27 transfer, assignment, performance evaluation, suspension, or  
28 other disciplinary action.